



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Cherokee-Crawford School District 247

From: Kim Scardino, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission

Date: June 15, 2013

Re: DA No. 13-1383, released June 14, 2013

Please find accompanying this memo the Bureau's decision on your appeal. The accompanying decision may be referenced in the future by its proceeding number and release date: DA No. 13-1383, Released June 14, 2013.

If the Bureau has granted your appeal, please contact the Universal Service Administrative Company (USAC) at 1-888-203-8100 for more information regarding your application. Please submit any information to USAC that the order may require. Once USAC has reviewed your application related to the issues resolved in the attached letter, you will receive a revised funding commitment decision letter.

If the Bureau has denied your appeal and you choose to seek consideration of the Bureau's decision, you must file either a petition for reconsideration by the Bureau or an application for review by the full Commission with the Commission within 30 days from the released date of this decision. You may file your petition for reconsideration or application for review using the Internet by accessing the Commission's electronic comment filing system (ECFS) at <http://fjallfoss.fcc.gov/ecfs2/>. Please be sure to reference CC Docket No. 02-6 on your filing.

Commission's rules to permit them to correct those errors.⁵ We find that, with respect to the applications and funding requests identified in Appendix B, twelve petitioners sought to make changes to their E-rate applications that were more than ministerial or clerical, and therefore have not demonstrated that good cause exists to justify a waiver of our rules.⁶ In denying these requests, we emphasize that an applicant's request to remove entities from its application, when such removal would raise the average discount percentage for the relevant funding request above the funding threshold for that year, is not justifiable as a ministerial or clerical error.⁷

3. Consistent with precedent,⁸ we also waive section 54.720(a) of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for Chabad of Southern Nevada, Dominion Academy Charter School, John F. Kennedy Day School, Northern Central Local School District, and Second Mesa Day School, which submitted their appeals to the Commission or USAC within a reasonable period of time after receiving actual notice of adverse earlier decisions by USAC.

4. We therefore remand the underlying applications listed in Appendix A to USAC for further action consistent with this order. To ensure that those underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendix A and issue a funding commitment or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

5. We also waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁹ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year.

6. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in Appendix A ARE

⁵ 47 C.F.R. § 54.504(a) (requiring applicants to submit a completed FCC Form 471 to USAC); *see infra* Appendix A. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁶ *See* Appendix B.

⁷ *See Beth Rivka Order*, 25 FCC Rcd at 10659, para. 12.

⁸ 47 C.F.R. § 54.720(a). *See Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (Wireline Comp. Bur. 2011) (granting petitioners waivers of the Commission's filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decisions).

⁹ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that sections 54.504(a), and 54.507(d) of the Commission's rules, 47 C.F.R. §§ 54.504(a), and 54.507(d), ARE WAIVED for the petitioners listed in Appendix A to the limited extent provided herein.

8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Chabad of Southern Nevada, Dominion Academy Charter School, John F. Kennedy Day School, Northern Central Local School District, and Second Mesa Day School.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in Appendix B ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX B

Requests Denied

Petitioner	Application and Funding Request Number(s)	Funding Year	Date(s) Request for Review/Waiver Filed
Alexander County School District Taylorsville, NC	827833	2012	Dec. 21, 2012
Cherokee-Crawford School District 247 Cherokee, KS	800166	2011	Jun. 19, 2012
Concordia Charter School Mesa, AZ	809062 (FRN 2196158)	2011	Sept. 20, 2012
Dalton Public School District Dalton, GA	791733	2011	Nov. 13, 2012
Halifax County School District Halifax, VA	849905	2012	Dec. 21, 2012 supplemented Jan. 22, 2013
Hickory City School District Hickory, NC	828034 (FRN 2374045)	2012	Dec. 21, 2012 supplemented Jan. 21 & 29, 2013
Ionia Public Schools Ionia, MI	830257	2012	Nov. 19, 2012 supplemented Dec. 19, 2012
Laurens County School District Dublin, GA	865767	2012	Nov. 13, 2012 supplemented Feb. 4, 2013
Manchester School District Manchester, CT	825626	2012	Dec. 5, 2012
Mid-Florida Community Services Brooksville, FL	799603	2011	Sept. 28, 2012
Tustin Unified School District Tustin, CA	824322	2012	Apr. 1, 2013
Wilson County School District Wilson, NC	829164 (FRNs: 2372018, 2372034, 2372056)	2012	Dec. 21, 2012